Office - Supreme Court, U.
FILED
JUL 2 3 1956
JOHN T. FEY, Cle

IN THE

Supreme Court of the United States

October Term, 1956

No. 273

CHICAGO GREAT WESTERN RAILWAY COMPANY,
a corporation,

Petitioners,

vs.

LEONARD L. RAMSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

DAVID L. GRANNIS
Counsel for Petitioner
GRANNIS & GRANNIS
Attorneys at Law
F. J. Schult Building
South St. Paul, Minnesota
BRYCE L. HAMILTON
Counsel for Petitioner
WINSTON, STRAWN,
SMITH & PATTERSON
First National Bank Building
Chicago, Illinois

CApital 2-2701 — Review Publishing Co., 141 E. 5th St., St. Paul 1, Minn. — CApital 2-2701

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	2
Reasons for Granting Writ	5
Conclusion	11
Appendix A	12
Appendix B	13
Appendix C	27
Appendix D	28

AUTHORITIES CITED

	Page
Federal Employers' Liability Act, Title 45, U.S.C.A., Section 56	2
Title 28, U.S.C.A., Section 1257(3)	2
Title 28, U.S.C., Section 1404(a)	5
American Railway Express Co. v. Kentucky (1925), 273 U. S. 269, 71 L. Ed. 639	8
Gulf Oil Corp. v. Gilbert (1947), 330 U. S. 501, 91 L. Ed. 1055, 67 Sup. Ct. 839	5
Johnson v. Chicago, Burlington & Quincy Railroad Company (1954), 66 N. W. 2d 763	6

Maynard v. Chicago & Northwestern Railway Company, 77 N. W. 2d 183 6
Miles v. Illinois Central Railroad Co. (1942), 315 U. S. 698, 86 L. Ed. 1129, 1134 9
Missouri v. Mayfield (1950), 340 U. S. 1, 95 L. Ed. 3, 71 Sup. Ct. 1 5
Norwood v. Kirkpatrick (1955), 349 U. S. 29, 99 L. Ed. 789, 75 Sup. Ct. 544 5
Young v. Ragen (1948), 337 U. S. 235, 93 L. Ed. 1333.. 8

IN THE

Supreme Court of the United States

October Term, 1956

No. .....

CHICAGO GREAT WESTERN RAILWAY COMPANY,
a corporation,

Petitioners,

vs.

LEONARD L. RAMSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Minnesota entered in the above entitled case on May 4, 1956.

OPINION BELOW

The opinion of the Supreme Court of the State of Minnesota is reported in 77 N. W. 2d 176 (App. B, infra).

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered May 21, 1956 (App. C, infra). The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. Section 1257 (3) (App. A, infra).

QUESTION PRESENTED

Whether the Supreme Court of the State of Minnesota erred in reversing the Trial Court for dismissing the above entitled action on the ground of forum non conveniens.

STATUTE INVOLVED

The statutory provision involved is Title 45 U.S.C.A., Section 56, of the Federal Employers' Liability Act, printed in Appendix A, infra.

STATEMENT

This action was brought by plaintiff under the Federal Employers' Liability Act against the defendant to recover damages for personal injuries alleged to have been sustained as the result of defendant's negligence on August 9, 1954 at Fort Dodge, Iowa. The action was commenced December 1, 1954 and plaintiff laid the venue of his action in Mower County, Minnesota.

On January 22, 1955, defendant moved the District Court of Mower County, Minnesota for a dismissal of this action

on the ground, principally, of forum non conveniens. By order of that court dated January 31, 1955, plaintiff's action was dismissed. Judgment of dismissal was entered on May 9, 1955, and on that same date notice of appeal to the Supreme Court of the State of Minnesota was served. The matter was submitted and argued to the Supreme Court, and judgment reversing the District Court was entered on May 21, 1956.

It is important that plaintiff now is and always has been a resident of Clarion, Iowa, which is the county seat of Wright County. In addition to the District Court of Clarion, Iowa, there is a District Court at Fort Dodge, Iowa, located in Webster County, the place where the alleged accident occurred. Both Webster and Wright Counties are within the Northern District of Iowa for the District Court of the United States. A term of that Court is held at Fort Dodge, Iowa. All three of these forums, then, were available and open to plaintiff in which, under the Federal Employers' Liability Act, he could have laid the venue of his action.

Among other affidavits attached to defendant's motion for dismissal was the affidavit of Francis Bigley (T. pp. 17-19). Because of its importance, we herewith quote from Exhibit A attached to said affidavit as follows:

"From Fort Dodge, Iowa to Austin Minnesota, via Highway

Fort Dodge to Algona, Iowa, via Highway 169	42 miles
Algona, Iowa, to Gardner, Iowa, via Highway U. S. 18	33 miles
Gardner, Iowa, to Albert Lea, Minnesota, via Highway U. S. 69	47 miles
Albert Lea, Minnesota, to Austin, Minnesota, via U. S. Highway 16	20 miles
Total Distance	142 miles

Clarion, Iowa to Austin, Minnesota via Highway	
Clarion, Iowa, to U. S. Highway 69	5 miles
Junction of Highway 3 and U. S. 69 to Albert Lea, Minnesota	74 miles
Albert Lea, Minnesota, to Austin, Minnesota, via U. S. 16	20 miles
Total Distance	99 miles
Clarion, Iowa to Fort Dodge, Iowa, via Highway	45 miles

By Rail

Fort Dodge, Iowa, to Austin, Minnesota ..	112.2 miles
Clarion, Iowa to Austin, Minnesota	84.3 miles
Clarion, Iowa to Fort Dodge, Iowa	27.9 miles

"If witnesses travel by train, it would be necessary for them to board train at Fort Dodge, Iowa, at 12:10 A.M. and at Clarion, Iowa at 1:00 A.M. and ride until 4:05 A.M.

"In returning to Fort Dodge and Clarion, Iowa, witnesses would have to board train at Austin, Minnesota, at 11:20 P.M., arriving at Clarion, Iowa at 1:45 A.M. and Fort Dodge, Iowa at 3:00 A.M.

"Also, the above trains known as Chicago Great Western trains Nos. 13 and 14, the only rail transportation on any road between Austin, Minnesota, Clarion, Iowa and Fort Dodge, Iowa, are primarily mail trains and do considerable mail and express work; and it is not unusual that they run one or two hours late.

"These trains not having sleeping accommodations, it would necessitate witnesses in many instances sitting up all night."

All of the affidavits of defendant establish beyond dispute that this action could be tried in the District Courts of Iowa at either Clarion or Fort Dodge, or in the United States Dis-

trict Court for the Northern District of Iowa at Fort Dodge. The affidavits further show beyond dispute that the terms of these courts are and were available at all times to plaintiff. At the same time, the memorandum of District Judge A. C. Richardson, Mower County, Minnesota, establishes the uncontraverted fact that the calendar of that county is a heavy one even without the inclusion of imported cases from other states, and it was on this fact that his decision was in part based.

It is further important to note that the Supreme Court of Minnesota was divided four to three in reversing the judgment of dismissal of the District Court, Mower County, Minnesota.

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of the State of Minnesota (App. B, infra), from which this appeal is taken, is in conflict with decisions of this Court in *Gulf Oil Corp. v. Gilbert*, (1947), 330 U.S. 501, 91 L. Ed. 1055, 67 Sup. Ct. 839; *Missouri v. Mayfield* (1950), 340 U.S. 1, 95 L. Ed. 3, 71 Sup. Ct. 1; and *Norwood v. Kirkpatrick* (1955), 349 U.S. 29, 99 L. Ed. 789, 75 Sup. Ct. 544.

This Court decided in *Missouri v. Mayfield*, supra, that the several states could accept or reject the doctrine of forum non conveniens as they saw fit. This, of course, is without regard to Section 1404(a), Title 28 U.S.C., which is only applicable to Federal District Courts. However, whether applying one rule or the other, substantially the same factors are involved in the Trial Court's determination of a motion to dismiss under the doctrine or a motion for transfer under the statute. In either case the *trial court's* determination of the issue rests in its sound judicial discretion.

While it is apparently true that denial of a motion to dismiss by a state court under the Federal Employer's Liability Act on the ground of forum non conveniens raises no federal question (*Missouri v. Mayfield*, supra), we submit that a federal issue is raised where, conversely, such motion has been granted, as is the situation here.

In this case the trial court of Mower County, Minnesota, pursuant to its authority vested by virtue of *Johnson v. Chicago, Burlington & Quincy Railroad Company* (1954), 66 N. W. 2d 763, decided in the exercise of its discretion that defendant was entitled to a dismissal. The Minnesota Supreme Court, in effect, reversed the trial court on the ground that it had abused its discretion in dismissing plaintiff's action although no such assignment of error or issue was presented on appeal by plaintiff (R. pp. 50-51). This was done without any serious consideration by the majority to such undisputed facts as the congestion of the Mower County calendar.

Actually plaintiff raised the sole issues that the trial court had contravened federal rights granted under the Federal Employer's Liability Act and had misapplied the law of forum non conveniens in the instant case (R. pp. 50-51). Astounding as it is, the Supreme Court held that the doctrine of forum non conveniens did apply and that no federal rights under the Federal Employer's Liability Act had been contravened yet decided that the trial court had abused its discretion in granting defendant's motion to dismiss.

To further confound the situation, the Minnesota Supreme Court the same date decided the case of *Maynard v. Chicago & Northwestern Railway Company*, 77 N. W. 2d 183 (See App. D, infra), and there, upon identical issues, sustained the trial court's judgment of dismissal. It is interesting to

observe that plaintiffs in both cases are represented by the same counsel and that substantially the same essential facts were involved.

Defendant herein submits that despite the fact this Court has held (see *Missouri v. Mayfield*, supra) that the states are free to adopt or reject the doctrine of forum non conveniens, once the doctrine is accepted by the State Court and a motion based upon such local practice is granted by a state *trial court*, then a federal issue is involved in Federal Employer's Liability cases. Such is the situation in the instant case.

Once it is recognized that a federal issue does exist, then it is clear that the decision of the Minnesota Supreme Court is in conflict with the most recent holdings of this Court. See *Gulf Oil Corporation v. Gilbert*, supra, where the Court said (91 L. Ed. at p. 1060):

> "* * * Even where federal rights binding on state courts under the Constitution are sought to be adjudged, this court has sustained state courts in a refusal to entertain a litigation between a non-resident and a foreign corporation or between two foreign corporations * * *."

The Mower County Trial Court here refused to entertain the litigation between non-resident Ramsey and foreign corporation Chicago Great Western Railway Company, even though the Federal Employer's Liability Act permitted plaintiff in the exercise of his federal rights to bring his action initially in Mower County. Nor is there anything inconsistent with this in the later decision of this Court in *Norwood v. Kirkpatrick*, supra.

2. If, for any reason, this Court should take the position that the action of the trial court in granting defendant's motion to dismiss and the action of the Minnesota Supreme Court in reversing that decision, is a matter of local policy

not reviewable by this Court, then in such event defendant submits that special circumstances exist which relieve this Court of being bound by local law.

In *American Railway Express Co. v. Kentucky* (1925), 273 U. S. 269, 71 L. Ed. 639, the Court said (71 L. Ed., page 641):

> "* * * Save in exceptional circumstances not now present we must accept as controlling the decision of the state courts upon questions of local law, both statutory and common. * * *"

We believe such exceptional circumstances do exist herein as were contemplated in that case. Perhaps more appropriate is *Young v. Ragen* (1948), 337 U. S. 235, 93 L. Ed. 1333, where the Court said (93 L. Ed. 1336):

> "Of course we do not review decisions which rest upon adequate non-federal grounds, and of course Illinois may choose the procedure it deems appropriate for the vindication of federal rights. Loftus v. Illinois, 334 U. S. 804, 92 L. Ed. 1737, 68 Sup. Ct. 1212, supra. But it is not simply a question of state procedure when a state court of last resort closes the door to *any* consideration of a claim of denial of a federal right. * * *"

The Minnesota Supreme Court has seen fit to completely disregard the proper appellate procedure in reviewing the application of the doctrine of forum non conveniens. That it is completely at variance with this court can readily be seen by a comparison with the decisions of this Court in the Gulf Oil and Norwood cases. Moreover, the majority of the Minnesota Court has completely emasculated the doctrine from the basis for local policy in this regard as clearly set forth in *Johnson v. Chicago, Burlington & Quincy Railroad Co.*, supra, and as reiterated in the dissenting opinion of Justice Knutson in the instant case. Yet that Court did not overrule the Johnson case by its decision herein.

The privilege of adjudicating rights under the Federal Employer's Liability Act in state courts springs from Federal law. See *Miles v. Illinois Central Railroad Co.* (1942), 315 U. S. 698, 86 L. Ed. 1129, 1134. By judicial interpretation and construction the doctrine of forum non conveniens has become as much a part of the Federal Employer's Liability Act as has Section 56 of that act granting to the plaintiff the right to choose his forum. Certainly if any rights of a plaintiff were abrogated under this section, they would be subject to review by this Court. By the same token the rights of the defendant herein—which we submit have been substantially impaired—are likewise subject to review by this Court.

3. The issues raised by this litigation are extremely important not only to these parties but also to all employers and employees coming within the purview of the Federal Employer's Liability Act. Simply because this Court has left the matter of adoption or rejection of the doctrine of forum non conveniens to the several states does not give a state a right, once it has adopted the doctrine, to utilize it in some cases and completely reject it in others where the doctrine is in issue. This is so, we contend, because Federal rights under the act are involved. It may well be that unless this Court to some extent limits or at least defines the area within which the several states may act under the doctrine, the state with the least regard for the standards already set by this Court in the Gulf Oil and Norwood cases will likely subject its courts and citizens to a flood of this type of litigation.

No real consideration was given by the Minnesota Supreme Court to the factors of public interest, namely, congestion of the Mower County jury calendar, the burden upon the local people serving as jurors, and the additional expense to the

taxpayers of Mower County who have absolutely no relation to the litigation.

The learned trial judge in Mower County was in a much better position to judge these factors than was the Supreme Court. It is obvious that the doctrine of forum non conveniens rests upon the sound discretion of the *trial judge*. He exercised his discretion in accord with the standards set out in the Gulf Oil and Norwood cases and the local Johnson case. Yet with utter disregard for these standards and without any evidence upon which to support their decision, and without the issue of abuse of discretion being presented, the Minnesota Supreme Court held that the trial court abused its discretion under the doctrine. To accept the doctrine (*Johnson v. Chicago, Burlington & Quincy Railroad Co.; Menard v. Chicago Northwestern Railway Company*, supra) while at the same time, in effect, rejecting it in the instant case is such a flagrant miscarriage of justice, defendant respectfully submits that on this ground alone this Court should review.

CONCLUSION

These, defendant respectfully submits, are special and important reasons for which review by by certiorari can and should be granted.

Respectfully submitted,

DAVID D L. GRANNIS
Counsel for Petitioner
GRANNNIS & GRANNIS
Attorneys at Law
F. J. Schult Building
South St. Paul, Minnesota
BRYCE L. HAMILTON
Counsel for Petitioner
WINSTON, STRAWN,
SMITH & PATTERSON
First National Bank Building
Chicago, Illinois

APPENDIX A

TITLE 28, U. S. C., SECTION 1257

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) * * *

"(2) * * *

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

TITLE 45, U. S. C., SECTION 56

"No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States. Apr. 22, 1908, c. 149, § 6, 35 Stat. 66; Apr. 5, 1910, c. 143, §1, 36 Stat. 291; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, c. 685, § 2, 53 Stat. 1404; June 25, 1948, c. 646, § 18, 62 Stat. 989."

APPENDIX B

No. 150 Mower County Frank T. Gallagher, J.
Concurring, Dell, C. J.,
Thomas Gallagher, J.
Dissenting, Knutson, J.,
Matson, J., Nelson, J.

Leonard L. Ramsey, Appellant,

36684 vs.

Chicago Great Western Railway Company, Respondent.

Endorsed
Filed May 4, 1956
Frank Larkin, Clerk
Minnesota Supreme Court

SYLLABUS

Under the facts and circumstances of this case, plaintiff is entitled to have this case tried in Austin, Minnesota, at a time convenient to the District Court of Mower County.

Reversed.

OPINION

Frank T. Gallagher, Justice.

Appeal from a judgment of dismissal entered May 9, 1955, by the District Court of Mower County.

The principal question for our determination is whether the trial court erred in its application of the law of forum non conveniens.

The action was brought by the plaintiff, a citizen and resident of Iowa, against the employer under the Federal Em-

ployers' Liability Act to recover da
jury alleged to have been sustained
negligence. It was undisputed that t
the defendant's yard in Fort Dodge,

The defendant moved for a dismis
grounds of forum non conveniens a
trial of the matter in Mower County
den on the taxpayers and the court of
constitute an unreasonable and unne
state commerce. In support of its
affidavits to the effect that Fort Dod
from Austin; that plaintiff is a resi
that the defense of the action woul
Court of 11 persons as witnesses from
and Fort Dodge; that the Mower Cou
no power to issue subpoenas to brin
that the trial would consume six or s
expense of a trial in Minnesota would
than if the case were tried in Iowa.

In opposition to the motion, plaint
ing in substance that the residence
entire train crew at the time of the
from Austin; that all of the witness
in the employ of the defendant and
regardless of the place of trial it wo
defendant's witnesses would lose som
records would be available at the tim
tion; that plaintiff was treated by on
road doctor; and that such medical t
company doctors will be available at

In Johnson v. Chicago, B. & Q. R
N. W. (2d) 763, this court stated t

ages for personal in-
because of defendant's
e accident occurred in
owa.

l of the action on the
d that to permit the
ould be an undue bur-
that county and would
ssary burden on inter-
notion, defendant filed
e is 112.2 miles by rail
lent of Clarion, Iowa;
require attendance in
the vicinity of Clarion
nty District Court had
in medical testimony;
ven days; and that the
e $1,500 to $2,000 more

iff filed affidavits show-
f the plaintiff and the
accident was 84 miles
s to the accident were
under its control; that
ld be likely that all of
time; that the hospital
of the trial, by stipula-
y one doctor not a rail-
stimony of the railroad
the time of the trial.

. Co. 243 Minn. 58, 66
at, as long as we treat

citizens of our own state who are nonresidents on the same basis as we treat noncitizens who are nonresidents, the Federal Constitution or decision law does not bar our adoption of the forum non conveniens rule in declining jurisdiction over transitory causes of action. We further said that there is nothing in our state constitution which prevents the application of the forum non conveniens rule. This court also said there that the reasons for rejecting the doctrine of forum non conveniens in Boright v. Chicago, R. I. & P. Ry. Co. 180 Minn. 52, 230 N. W. 457, no longer exist and that the Boright case and others of like import in which the forum non conveniens rule had heretofore been rejected were expressly overruled.

We held in the Johnson case that the district courts of this state may fairly exercise their discretion in declining to accept jurisdiction of transitory causes of action brought here by citizens and noncitizens of this state who are nonresidents when it fairly appears that it would be more equitable that the cause of action be tried in some other available court of competent jurisdiction. However, in the closing paragraph of the Johnson case we also said that, if the trial courts abused their discretion in border-state cases, relief would undoubtedly be available upon petition to this court.

It is our opinion that under that paragraph relief can be granted in this court in border-state cases if there is what we might consider an abuse of discretion on the part of the trial court in refusing to consider a case. If we are ever going to grant such relief to a plaintiff from a border state so as to permit trial in Minnesota, it is our further opinion that the fact situation in the instant case justifies it. Here the plaintiff employee lives only 84 miles by rail or 99 miles by highway from Austin. The accident happened at Fort Dodge,

112.2 miles by rail and 142 miles by highway from Austin. Clearly it cannot be said in this day and age with the quick methods of transportation by car that merely because of a state line anyone would be particularly inconvenienced in going that distance any more than it could be said that it would be impractical to try the case in Austin if the plaintiff lived or the accident occurred an equal distance from that city within the State of Minnesota. If we say under the facts of this case that no relief is available to an employee who seeks to try his case in Minnesota, it is difficult to visualize any situation which would permit relief under the last paragraph of the Johnson case, and its language would then be meaningless.

For the reasons above stated we believe that the plaintiff should have been permitted, under the facts and circumstances of the instant case, to have it tried in Austin at a time convenient to the District Court of Mower County.

Reversed.

Dell, Chief Justice (concurring).

I concur in the opinion of Mr. Justice Frank T. Gallagher but would prefer to go one step further and hold, as I suggested in the concurring opinion in Johnson v. Chicago, B. & Q. R. Co. 243 Minn. 58, 79, 66 N. W. (2d) 763, 776, that, in order to avoid confusion and to afford employees under the F.E.L.A. a reasonable choice of venue, causes of action which arise in an adjoining state or where the employee lives in an adjoining state are triable in this state as a matter of right at the option of the employee. This we may adopt as a rule of law since we are dealing with local law and policy.

As to border states we have every reason to withhold the application of the doctrine of forum non conveniens because

of the heavy flow of commerce between border states and the complex problems that are bound to arise due to the necessity of treating citizens of this state, who are nonresidents, the same as noncitizen nonresidents in order not to violate the privileges and immunities clause of the Federal Constitution (U. S. Const. art. IV, § 2). Moreover, because of the constant travel to and fro of residents of contiguous states and the many and varied dealings and persistent trade between their people, border states stand in a separate class and peculiar relation one to the other that set them apart from noncontiguous states. For this reason there is nothing arbitrary in applying the doctrine to noncontiguous states and withholding its application as to contiguous states. It must not be overlooked that the doctrine applies to all transitory actions and not alone to F.E.L.A. actions.

To adopt the policy which I suggest will be in keeping with the spirit of § 56 of the F.E.L.A. (36 Stat. 291, 45 U. S. C. A., § 56). Moreover, it will avoid confusion and enable a litigant to know that when such an action is so started it cannot be dismissed on the basis of judicial discretion which may be exercised one way by one judge and a different way by another. Such a rule will assist in relieving the burden of busy courts in deciding venue questions such as the one presented here.

I do not agree with the philosophy of the dissent which has appeared since this concurring opinion was written. In the administration of justice—and there is no cause more sacred than the cause of justice—there ought to be a haven somewhere in between both extremes for the weak and the strong alike which courts should endeavor to find and preserve so that the weak may not harass the strong nor the strong oppress the weak. That haven is not to be found in the philoso-

phy of the dissent. The dissent, while relying upon the quoting at length from Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 508, 67 S. Ct. 839, 843, 91 L. ed. 1055, 1062, neglects to point out that the court also said:

> "Wisely, it has not been attempted to catalogue the circumstances which will justify or require either grant or denial of remedy."

Moreover, as the final sentence of the third quoted paragraph and immediately between the two last quoted paragraphs from that opinion, the dissent has left out this all-important statement:

> "* * * But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."

The dissent has not properly construed the purpose and intent of the last paragraph of Johnson v. Chicago, B. & Q. R. Co. 243 Minn. 58, 66 N. W. (2d) 763, as I read it and understood it when it was written, and it has failed to give due consideration to another portion of that decision, namely, that the discretion of a trial court to dismiss an action under the rule of forum non conveniens is one to be cautiously exercised.

The record does not support the suggestion of the dissent that the courts of this state are being cluttered up, or will be, with out-of-state cases. To the contrary, it is a matter of common knowledge that the rural courts of Minnesota including Mower County, are operating on a reasonably current basis. Under the facts of this case it was an abuse of discretion for the lower court to dismiss this action which it is our duty to correct and this we have done.

Thomas Gallagher, Justice (concurring).

I concur in the viewpoint expressed by Mr. Chief Justice Dell.

Knutson, Justice (dissenting).

I cannot agree with the majority opinion. Apparently it is intended to rest this decision on the last statement of our opinion in Johnson v. Chicago, B. & Q. R. Co. 243 Minn. 58, 79, 66 N. W. (2) 763, 776, where we said:

> "If the trial courts abuse their discretion in the border-state cases suggested in the concurring opinion of Mr. Chief Justice Dell, relief will no doubt be available upon petition to this court."

It seems clear to me that, under any fair reading of the opinion in that case, the position of the majority is untenable. All that the statement says, in rather plain language, is that, if there is an *abuse* of discretion by the trial court, relief may be had here. Whatever else the statement intended to do, surely a construction of it which attempts not only to undermine the entire decision itself but to rewrite the whole doctrine of forum non conveniens cannot be justified on any theory. It may have been unfortunate that it was included at all, but at best it simply is an assurance to those interested that, if trial courts abuse their discretion in applying the doctrine of forum non conveniens, relief may be had here. That follows even in the absence of such statement, if we properly exercise our appellate function. The statement neither adds to, nor detracts from, the decision itself.

Application of the doctrine or forum non conveniens involves the exercise of judicial discretion *by the trial court*.[1]

[1] 14 Am. Jur., Courts, § 230; Universal Adjustment Corp. v. Midland Bank, Ltd. 281 Mass. 303, 184 N. E. 152, 87 A. L. R. 1407.

The exercise of discretion requires the trial court to use its judgment based on the facts before it. "Discretion" is defined in Webster's New International Dictionary (1930) as "Freedom to decide or to act according to one's own judgment." In Chapman v. Dorsey, 230 Minn. 279, 285, 41 N. W. (2d) 438, 442, 16 A. L. R. (2d) 1015, 1021, we said:

> "* * * Judicial discretion is the sound choosing by the court, subject to the guidance of the law, between doing or not doing a thing, the doing of which cannot be demanded as an absolute right of the party who asks that it be done."[2]

Abuse means improper use or application.[3] In order for the trial court to properly exercise its discretion in applying the doctrine of forum non conveniens, there are a number of factors it must take into consideration.[4] Probably as good statement of the principal factors involved as any is that of the United States Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 507, 67 S. Ct. 839, 842, 91 L. ed. 1055, 1062, where the court said:

> "The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute. * * *
>
> * * * * *
>
> "* * * The doctrine leaves much to the discretion of the court to which plaintiff resorts, * * *.
>
> "If the combination and weight of factors requisite to given results are difficult to forecast or state, those to

---

[2]Bowers, Judicial Discretion of Trial Courts, §§ 10, 12.

[3]Bowers, Judicial Discretion of Trial Courts, §§ 12, 13.

[4]Barrett, *The Doctrine of Forum Non Conveniens*, 35 Calif. L. Rev. 380, 402.

be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. * * *

"Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home."

While it has now been determined that 62 Stat. 937, 28 U. S. C. A., § 1404(a), is not a codification of the forum non conveniens rule (Norwood v. Kirkpatrick, 349 U. S. 29, 75 S. Ct. 544, 99 L. ed. 789), in that under the Federal statute the cause of action is transferred from one court to another instead of being dismissed as under the forum non conveniens

rule, substantially the same factors are involved in an exercise of the court's discretion in applying one rule or the other. In discussing the factors to be considered, the court said in Chicago, R. I. & P. R. Co. v. Igoe (7 Cir.) 220 F. (2d) 299, 304, citing in support Gulf Oil Corp. v. Gilbert, *supra*:

> "* * * We give little weight to the claim that plaintiff will be required to hire an Iowa attorney if the transfer is ordered.
>
> "Factors under the statute which demonstrate that a transfer should be made are: convenience of witnesses of both plaintiff and defendant; the ease of access to sources of proof; the availability of compulsory process to compel the attendance of unwilling witnesses; the smaller amount of expense required for willing witnesses; the availability of a view of the premises; the congestion of the District Court calendar in the Northern District of Illinois, Eastern Division; that no controverted issue of fact depends upon any event that occurred in the Northern District of Illinois; and the burden of a jury trial should not be imposed upon the Northern District of Illinois, an area which has no relation to the litigation."

Our function on appeal is, or should be, limited to a determination of whether there has been an abuse of discretion. The question for us is not what we would have done had we been sitting as a trial judge. In Webber v. Webber, 157 Minn. 422, 427, 196 N. W. 646, 648, we said:

> "* * * We cannot interfere with this award, unless there has been an abuse of discretion which means a discretion exercised to an end or purpose not justified by and clearly against reason and evidence; a clearly erroneous conclusion and judgment—one that is clearly against the logic and effect of such facts as are presented in support of the application, or against the reasonable and probable deductions to be drawn from the facts disclosed. 1 C. J. 372."

In this case the affidavits in support of the motion for a dismissal have set forth that a large number of witnesses who reside in Iowa will be required for the trial and that they cannot be compelled to attend the trial in Minnesota; that the accident occurred on the tracks of the railway company in Iowa and that the witnesses who would be compelled to be brought from Iowa would have to testify as to the condition of defendant's tracks, the condition of defendant's train and cars, and matters of that kind. It also alleges the additional expense of bringing the witnesses to Minnesota and that the testimony of medical witnesses would have to be taken by deposition in Iowa, which would be ineffective in presenting the case to a jury. The affidavits show that several courts are available to plaintiff in the State of Iowa and that the case can be tried more expeditiously and with less expense in that state.

The only affidavits in opposition are those of two of the attorneys for plaintiff setting forth nothing which would contradict the allegations in the affidavits of defendant. Based on these affidavits and the knowledge which the court had of the congestion of its own calendar, the court granted defendant's motion. In its memorandum, among other things, the court said:

> "* * * The clerk of the District Court advises that a check of his minutes for the calendar year of 1954 discloses that the time of the District Court in Mower County was taken up for 18 days in the trial of imported F.E.L.A. cases. There are, in addition, still three, possibly four (depending on the outcome of a pending motion), of these cases remaining for trial.
>
> "The District Court calendar is now a heavy one, with purely local cases. Mower County cannot be expected to carry the additional burden arising from this kind of imported litigation."

The court had reference to 18 trial days. This actually represents almost four weeks of trial work. If the remaining three or four cases take the time usually occupied by trial of this type of case, it is safe to say that an additional three weeks' time will be used up in these trials. This illustrates the situation in only one of our counties near the Iowa border. It is apparent, therefore, that the court, in exercising its discretion, considered a number of factors commonly involved in the application of the doctrine of forum non conveniens.

The decision in this case now holds that there was an abuse of discretion for the sole and simple reason that the distance between the place of the accident and the place of trial is only about 112.2 to 142 miles. No weight is given to the trial court's consideration of convenience or availability of witnesses; the congestion of the calendar in Mower County is ignored; all the factors involved, except only the number of miles of travel, apparently are discarded. The distance between the place of accident and place of trial no doubt is one factor to be considered, although a relatively unimportant one except as it affects the more important consideration of availability of witnesses and expense of trial. It does not and should not be the sole criteria. We might well ask: What would be our decision if this case were commenced in a court in the northern part of our state? Would we then hold that it was far enough so that the court could exercise its discretion? Cases may arise and do arise where it would be inequitable to refuse to entertain jurisdiction even though the case had its origin in a state far removed from our state. Suppose, for instance, a case where a person is injured in Oregon or Washington and is immediately brought here for medical attention. All medical witnesses may be available

here and not in the state of origin. Other witnesses likewise may be here. In such a case, it undoubtedly would be an abuse of discretion to refuse to retain jurisdiction. Or cases may arise where there is no forum available in the state of origin because of the running of the statute of limitations or some other reason.[5] In such case we should not refuse to entertain jurisdiction regardless of distance.

Nor do I believe that arbitrary state boundaries furnish any criteria for the application of the doctrine.[6] The same factors are involved in applying the doctrine no matter what state the case comes from. It seems to me that here we are not determining whether there has been an *abuse* of discretion but, instead, we are substituting our discretion for that of the trial judge.

If it is to be the rule in this state that distance is to be the sole criteria in applying the doctrine of forum non conveniens, it would seem that prudent attorneys engaged in this field of litigation might well be forewarned to start their actions in courts nearest the border of the state from which the case is imported or suffer the risk of having this court hold that they are far enough distant from the origin of the case so that the trial court may refuse to entertain jurisdiction. I do not believe that the doctrine of forum non conveniens should be emasculated in that manner. Nor can I see any justification for compelling the county of Mower, or any of our border counties, to assume the burden and expense of trying these cases when there is such a clear showing that the case can be more expeditiously and more inexpensively

[5]See, for instance, In re Estate of Daniel, 208 Minn. 420, 294 N. W. 465.

[6]See, 39 Minn. L. Rev. 115.

tried in the state of its origin. A determined effort has been made of late years, by cooperation of the judges and lawyers alike, to clear up our congested court calendars. Much progress has been and is being made. I do not think that anyone desires to deprive litigants of the use of our courts for the trial of cases properly here, but neither do I believe that litigants having cases properly here should be compelled to wait long periods of time before their cases can be tried in order that we accommodate those who wish to clutter up our court calendars with cases that can be tried more equitably in the state where they originated. We might well ask: Why should the State of Minnesota, by furnishing more judges, and the counties, by standing the court and jury expenses, be saddled with these costs in the absence of any showing that the litigants cannot have a fair trial where the case ought to be tried?

I think that we should approach this case as an appellate court. As such, we should determine whether there has been an abuse of discretion. If we are going to substitute our discretion for that of the trial judge, we should say so. If we are going to determine whether there has been an abuse of discretion, we should take into consideration the state of the record as to all factors involved in the exercise of discretion by the trial court. If we do that, it seems to me that it is clear that there has been no abuse of discretion here. I think that the case should be affirmed.

Nelson, Justice (dissenting).

I concur in the dissent of Mr. Justice Knutson.

Matson, Justice (dissenting).

I concur in the dissent of Mr. Justice Knutson.

APPENDIX C

STATE OF MINNESOTA
SUPREME COURT

Leonard L. Ramsey,
Appellant,

vs. 36684

Chicago Great Western Railway Company,
Respondent.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Mower be and the same hereby is in all things reversed.

And it is further determined and adjudged that appellant herein, do have and recover of respondent herein the sum and amount of One Hundred Twenty-six and 53/100 Dollars ($126.53), costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed May 21, 1956.

BY THE COURT

Attest: Frank Larkin
Frank Larkin Clerk.

STATEMENT FOR JUDGMENT

Statutory Costs $25.00. Printer $101.53. Clerk $———. Acknowledgments Return $———. Postage and Express $———. Appeal Bond $———. Transcript $———.

Total $126.53

APPENDIX D

Richard W. Mayn ard,
Appellant,
v.
Chicago and North Western R ailway Company,
Respondent.

No. 36726
Supreme Court of M innesota
May 4, 1956

Action commenced in Minneapol is, Minnesota, by Iowa employees against railway under F ederal Employers' Liability Act for injuries sustained at B oone, Iowa. The District Court, Hennepin County, Leslie L . Anderson, J., entered judgment of dismissal and plaintiff appealed. The Supreme Court, Murphy, Jr., held that whe re plaintiff resided over 300 miles from Minneapolis, all wit nesses resided in or near Boone and defendant asserted that t excess cost of trial in Minneapolis rather than Boone or D es Moines would be over $4,000, dismissal of action under doc trine of forum non conveniens did not contravene federal r ights.

Affirmed.

1. COURTS

Trial courts may decline to exercis se jurisdiction of a transitory cause of action where it can be e more equitably tried in some other available and competen t court even though the action may have arisen in an adjace nt state.

2. COURTS

In action commenced in Minneapolis, Minnesota, by Iowa employee against railway under Federal Employers' Liability Act for injuries sustained at Boone, Iowa, where plaintiff resided over 300 miles from Minneapolis, all witnesses resided in or near Boone and defendant asserted that excess cost of trial in Minneapolis rather than Boone or Des Moines would be over $4,000, dismissal of action under doctrine of forum non conveniens did not contravene federal rights. Federal Employers' Liability Act as amended 45 U.S.C.A. §§ 51-60.

Syllabus by the Court

Application of doctrine of forum non conveniens to a cause of action arising in a state adjoining Minnesota brought by resident of adjoining state does not contravene federal right under Federal Employers' Liability Act.

Davis, Rerat, Yaeger & Lush, Minneapolis, Paul F. Clements, Minneapolis, of counsel for appellant.

Warren Newcome, St. Paul, Lowell Hastings, Chicago, Ill., of counsel for respondent.

Murphy, Justice.

Action brought under Federal Employers' Liability Act, 35 Stat. 65, as amended, 45 U.S.C.A. §§ 51 to 60, in the District Court of Hennepin County by a nonresident to recover for injuries sustained in another state. Plaintiff appeals from the judgment dismissing his action under forum non conveniens.

The facts may be briefly summarized. The uncontroverted affidavit of the defendant states that the accident giving rise to this suit occurred at Boone, Iowa, plaintiff's residence, which is over 300 miles from Minneapolis by the shortest rail route. All witnesses reside in or near Boone, and the defendant asserts that the excess cost of a trial in Minneapolis rather than Boone or Des Moines, Iowa, will be over $4,000.

It is not contended here that the trial court abused its discretion in dismissing the action without prejudice. The plaintiff is here to test the application of forum non conveniens as established in 1954 in Johnson v. Chicago, B. & Q. R. Co., 243 Minn. 58, 66 N. W. 2d 763, to an action arising in a border state. The issue presented is this:

> "Does the application of the doctrine of forum non conveniens to a cause of action arising in an adjoining state to Minnesota, and being brought by a resident of that state, contravene federal rights under the Federal Employers' Liability Act?"

[1] Basically plaintiff's arguments are the same as those considered and rejected in the Johnson case in which we held that trial courts may decline to exercise jurisdiction of a transitory cause of action where it can be more equitably tried in some other available and competent court even though the action may have arisen in an adjacent state.

Moreover, this narrow question presented by this appeal has been decisively answered in the negative by the United States Supreme Court in Douglas v. New York, N. H. & H. R. Co., 279 U. S. 377, 387, 49 S. Ct. 355, 356, 73 L. Ed. 747, 752, and State of Missouri ex rel. Southern Ry. Co. v. Mayfield, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

[2] Following the Douglas, Mayfield, and Johnson cases, we hold that application of the doctrine of forum non conveniens does not contravene federal rights granted to plaintiff under the Federal Employers' Liability Act and that the invocation of that doctrine is not limited by the artificial barrier of two intervening state lines.

Affirmed.

Dell, Chief Justice (concurring specially).

In view of the decision of this court in Ramsey v. Chicago Great Western Railway Company, Minn., 77 N. W. 2d 176, I concur in the result.